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GRAHAM, CLEMENT B	
ART UNIT	**PAPER NUMBER**
3628	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/721,093	GUPTA ET AL.	
	Examiner	Art Unit	
	Clement B Graham	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-18 and 21-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-18 and 21-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 2-3, 19-20 has been canceled and Claims 1, 4-18, 21-31, remained pending.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 4-12, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

> The basis of this rejection is set forth in a two prong test of:
> (1) whether the invention is within the technological arts; and
> (2) whether the invention produces a useful, concrete and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, claims 1, 4–12, do not recite any structure or functionality to suggest that a computer performs the recited claims. Thus, claims 1, 4-12, are rejected as being directed to non-statutory subject matter.

Applicant's is advised to imbed a processor or computer in the body of the claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 4-18, 21-31, are rejected under 35 U.S.C. 102(e) as being anticipated by Boarman et al (Hereinafter Boarman U.S Patent 6, 609, 112).

As per claim 1, Boarman discloses a data processing system for generating bids for an auction the method comprising:
Sorting a plurality of bids for a set of bidding agents ("i. e, "participants" see column 2 lines 3-57 and column 5 lines 15-35") by decreasing ("i. e, adjusting") bid amount to form a sorted set of bids (see column 2 lines 30-52)
wherein bids for the set of bidding agents are sorted using upper limits ("i. e, adjusting") for the bids for the set of bidding agents (see column 2 lines 30-52) identifying a first bid ("i. e, "initial auction") from the plurality of bids for which an unallocatable portion ("i. e, "remaining two hub caps" see column 1 lines 42-49") of a requested quantity is present (see column 2 lines19-29 and column 6 lines 30-65) selecting a number of bids from the plurality of bids, wherein the number of bids is higher in a sorted set of bids than the first bid column 6 lines 30-65) and, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, setting a price for the number of bids to form a final equilibrium price and submitting a bid in the data processing system for each of the bidding agents based on the final equilibrium price. (Note Fig: 3b and see column 5 lines 60-65 and column 6 line 5 and column 6 lines 30-65).

As per claim 2, Boarman discloses, wherein each of the bidding agents in the set of bidding agents includes an upper limit (Note Fig: 3b and see column 5 lines 45-50).

As per claim 3, Boarman discloses wherein the identifying step comprises:
sorting a plurality of bids by decreasing bid amount to form a sorted set of bids, wherein bids for the set of bidding agents are sorted using upper limits for the, bids for the set of bidding agents (Note Fig: 3b and see column 5 lines 60-65 and column 6 line 5) identifying a first bid from the plurality of bids in which an unallocatable portion of a requested quantity is present (see column 6 lines 30-65) selecting a number of bids from the plurality of bids, wherein the number of bids are higher in the sorted set of bids than the first bid and wherein the number of bids have an allocation requirement less than the unallocatable portion of the of the first bid and setting a price for the number of bids. (Note Fig: 3b and see column 5 lines 60-65 and column 6 line 5 and column 6 lines 30-65).

As per claim 4, Boarman discloses, wherein the sorting step, identifying step, selecting step, and setting step are repeated for unallocated items, remaining bids, and remaining unpriced order bids. (see column 6 lines 30-40 and column 1 lines 45-60).

As per claim 5, Boarman discloses, a method in a data processing system for generating bids for bidding agents(i. e, participants" see column 5 lines 15-35) in an auction, the method comprising:

sorting a plurality of bids by decreasing ("i. e, adjusting") bid amount to form a sorted set of bids, wherein each bid includes a quantity and wherein the plurality of bids includes order bids.(see column 2 lines 45-53 and Note abstract and Fig: 3a-3b and see column 3 lines 25-45 and column 5 lines 15-35)

identifying a first bid requesting ("i. e, "initial auction") a quantity for which an unallocatable portion ("i. e, "remaining two hub caps" see column 1 lines 42-49") is present, selecting a number of order bids from the plurality of bids, wherein the number of order bids is higher in the sorted set of bids than the first bid and have an allocation requirement less than the unallocatable portion first bid and setting a price in the data processing system for the number of order bids to form a final equilibrium price. (see column 6 lines 30-40 and column 1 lines 45-60).

As per claim 6, Boarman discloses wherein the number of order bids is a single order bid.(see column 1 lines 15-20).

As per claim 7, Boarman discloses, wherein each bid in the number of order bids is selected from the plurality of bids based on the allocation requirement, upper limit, and a time when each order bid in the number of order bids was received. (Note Fig: 3b and see column 5 lines 45-50).

As per claim 8, Boarman discloses , wherein each order bid in the number of order bids is selected from the plurality of bids based on the allocation requirement and an upper limit. (Note Fig: 3b and see column 5 lines 45-50).

As per claim 9, Boarman discloses, wherein each bid-in the number of order bids is selected based on the allocation requirement and the number of order bids maximize revenue.(see column 1 lines 45-60 and column 6 lines 30-40).

As per claim 10, Boarman discloses, further comprising: repeating the selecting and setting steps for any remaining portion of the unallocatable portion and any remaining order bids in the plurality of bids. (see column 1 lines 45-60 and column 6 lines 30-55).

As per claim 11, Boarman discloses, wherein the price of the number of order bids is less than a price for the first bid. (see column 1 lines 45-60 and column 6 lines 30-55).

As per claim 12, Boarman discloses, wherein the number of order bids includes a bid accepting a partial allocation of a quantity for the bid. (see column 1 lines 45-60 and column 6 lines 30-55).

As per claim 13, Boarman discloses a data processing system comprising: a bus system;
a communications unit connected to the bus system; a memory connected to the bus system, wherein the memory includes as set of instructions, and a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to receive a plurality of bids through the communications unit (see column 2 lines 6-11 and column 3 lines 50-65 and column 4 lines 5-35) sort the plurality of bids by decreasing bid amount ("i. e, adjusting") to form a sorted set of bids in which each bid includes a quantity and the plurality of bids includes order bids (see column 2 lines 45-50) identify a first bid ("i. e, "initial auction") within the sorted set of bids having a quantity in which an unallocatable portion is present ("i. e, "remaining two hub caps" see column 1 lines 42-49") select a number of order bids from the plurality of bids in which number of order bids are higher ("i. e, adjusting") in the sorted set of bids than the first bid and have an allocation requirement less than the unallocatable portion of the first bid, set a price for the number of order bids.(see column 1 lines 45-65 and column 6 lines 30-65).

As per claim 14. Boarman discloses, wherein the bus system is a single bus. (see column 3 lines 10-65 and column 4 lines 5-35).

As per claim 15, Boarman discloses wherein the bus system includes a primary bus-and-a secondary bus. (see column 3 lines 10-65 and column 4 lines 5-35).

As per claim 16, Boarman discloses the data processing system of claim 13, wherein the processing unit includes a plurality of processors. (see column 3 lines 10-65 and column 4 lines 5-35).

As per claim 17, Boarman discloses The data processing system of claim 13, wherein the communications unit is one of a modem and Ethernet adapter. (see column 3 lines 10-65 and column 4 lines 5-35).

As per claim 18, Boarman discloses a data processing system for generating bids for an auction the method comprising:
sorting means for sortings plurality of bids for a set of bidding agents ("i. e, "participants" see column 2 lines 3-57 and column 5 lines 15-35") by decreasing ("i. e, adjusting") bid amount to form a sorted set of bids (see column 2 lines 30-52)
wherein bids for the set of bidding agents are sorted using upper limits ("i. e, adjusting") for the bids for the set of bidding agents (see column 2 lines 30-52) identifying means for identifying first bid ("i. e, "initial auction") from the plurality of bids for which an unallocatable portion ("i. e, "remaining two hub caps" see column 1 lines 42-49") of a requested quantity is present (see column 2 lines19-29 and column 6 lines 30-65)
selecting means foe selecting a number of bids from the plurality of bids, wherein the number of bids is higher in a sorted set of bids than the first bid (see column 6 lines 30-65) and, wherein each bid in the number of bids has an allocation requirement less than the allocatable portion of the first bid, setting means for setting a price for the number of bids to form a final equilibrium price and submitting means for submitting a bid for each bidding agents based on the final equilibrium price. (Note Fig: 3b and see column 5 lines 60-65 and column 6 line 5 and column 6 lines 30-65).

As per claim 19, Boarman discloses, wherein each of the bidding agents in the set of bidding agents includes an upper limit.(Note Fig: 3b and see column 5 lines 45-50).

As per claim 20, Boarman discloses, wherein the identifying means comprises:
sorting means for sorting a plurality of bids by
decreasing bid amount to form a sorted set of bids, wherein bids for the set of bidding agents are sorted using upper limits for the bids for the set of bidding agents. (Note Fig:

3b and see column 5 lines 45-50) identifying means for identifying a first bid from the plurality of bids in which an unallocatable portion of a requested quantity is present; selecting means for selecting a number of bids from the plurality of bids, wherein the number of bids are higher in the sorted set of bids than the first bid and wherein the number of bids have an allocation requirement less than the unallocatable portion of the of the first bid, and setting means for setting a price for the number of bids. .(Note abstract and Fig: 3a-3b and see column 3 lines 25-45 and column 5 lines 15-35).

As per claim 21, Boarman discloses, wherein the sorting means, identifying means, selecting means, and setting means are repeated for unallocated items, remaining bids, and remaining unpriced order bids.

As per claim 22, Boarman discloses a data processing system for generating bids for bidding agents in an auction, the data processing system comprising: sorting means for sorting a plurality of bids by decreasing ("i. e, adjusting") bid amount to form a sorted set of bids, wherein each bid includes a quantity and wherein the plurality of bids includes order bids.(see column 2 lines 45-50) identifying means for identifying a first bid ("i. e, "initial auction") requesting a quantity in which an unallocatable portion ("i. e, "remaining two hub caps" see column 1 lines 42-49") is present, selecting means for selecting a number of order bids from the plurality of bids, wherein the number of order bids are higher("i. e, adjusting") in the sorted set of bids than the first bid and have an allocation requirement less than the unallocatable portion of the first bid, and setting means for setting a price for the number of order bids.(see column 1 lines 45-60 and column 6 lines 45-65).

As per claim 23, Boarman discloses, wherein the number of order bids is a single order bid. (see column 1 lines 15-20).

As per claim 24, Boarman discloses, wherein each bid in the number of order bids is selected from the plurality of bids based on the allocation requirement, upper limit, and a time when each order bid in the number of order bids was received. (Note Fig: 3b and see column 5 lines 45-50).

As per claim 25, Boarman discloses wherein each order bid in the number of order bids is selected from. the plurality of bids based on the allocation requirement and an upper limit. (Note Fig: 3b and see column 5 lines 45-50).

As per claim 26. Boarman discloses wherein each bid in the number of order bids is selected based on the allocation requirement and the number of order bids maximize revenue. (see column 1 lines 45-60 and column 6 lines 30-40).

As per claim 27, Boarman discloses further comprising:
repeating means for repeating initiation of the selecting means and setting means for any remaining portion of the unallocatable portion and any remaining order bids in the plurality of bids. (see column 1 lines 45-60 and column 6 lines 30-55).

As per claim 28, Boarman discloses wherein the price of the number of order bids is less than a price for the first bid. (see column 1 lines 45-60 and column 6 lines 30-55).

As per claim 29. Boarman discloses wherein the number of order bids includes a bid accepting a partial allocation of a quantity for the bid. (see column 1 lines 45-60 and column 6 lines 30-55).

As per claim 30, Boarman discloses a data processing system for generating bids for an auction the method comprising:
first instructions for sorting a plurality of bids for a set of bidding agents ("i. e, "participants" see column 2 lines 3-57 and column 5 lines 15-35") by decreasing ("i. e, adjusting") bid amount to form a sorted set of bids (see column 2 lines 30-52)
wherein bids for the set of bidding agents are sorted using upper limits ("i. e, adjusting") for the bids for the set of bidding agents (see column 2 lines 30-52) second instructions for identifying a first bid ("i. e, "initial auction") from the plurality of bids for which an unallocatable portion ("i. e, "remaining two hub caps" see column 1 lines 42-49") of a requested quantity is present (see column 2 lines19-29 and column 6 lines 30-65) third instructions for selecting a number of bids from the plurality of bids, wherein the number of bids is higher in a sorted set of bids than the first bid column 6 lines 30-65) and, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, fourth instructions for setting a price for the number of bids to form a final equilibrium price and fifth instructions for submitting a bid for each

of the bidding agents based on the final equilibrium. (Note Fig: 3b and see column 5 lines 60-65 and column 6 line 5 and column 6 lines 30-65).

As per claim 31, Boarman discloses a computer program product in a computer readable medium for generating bids for bidding agents in an auction, the computer program product comprising:

first instructions for sorting a plurality of bids by decreasing bid amount to form a sorted set of bids, wherein each bid includes a quantity and wherein the plurality of bids. (Note abstract and Fig: 3a-3b and see column 3 lines 25-45 and column 5 lines 15-35). includes order bids, second instructions for identifying a first bid requesting a quantity for which an unallocatable portion is present. (see column 1 lines 45-60 and column 6 lines 45-65) and third instructions for selecting a number of order bids from the plurality of bids, wherein the number of order bids are higher in the sorted set of-bids than the first bid and have an allocation requirement less than the unallocatable portion of the of the first bid, and fourth instructions for setting a price for the number of order bids. (Note abstract and Fig: 3a-3b and see column 3 lines 25-45 and column 5 lines 15-35).

Conclusion

5. Applicant's arguments files on 9/16/04 have been fully considered but they are not persuasive for the following reasons.

6. In response to Applicant's arguments as it pertains to Boarman.

7. In response to Applicant's arguments that reference fail to teach or suggest" sorting a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids, wherein bids for the set of bidding agents are sorted using upper limits for the bids for the set of bidding agents identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present selecting a number of bids from the plurality of bids, wherein the number of bids is higher in a sorted set of bids than the first bid and, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, setting a price for the number of bids to form a final equilibrium price and submitting a bid in the data processing system for each of the bidding agents based on the final equilibrium price and first instructions for sorting a plurality of bids for a set of bidding agents by

decreasing bid amount to form a sorted set of bids wherein bids for the set of bidding agents are sorted using upper limits for the bids for the set of bidding agents second instructions for identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present third instructions for selecting a number of bids from the plurality of bids, wherein the number of bids is higher in a sorted set of bids than the first bid and, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, fourth instructions for setting a price for the number of bids to form a final equilibrium price and fifth instructions for submitting a bid for each of the bidding agents based on the final equilibrium these limitations are addressed above as stated Boarman discloses sorting a plurality of bids for a set of bidding agents ("i. e, "participants" see column 2 lines 3-57 and column 5 lines 15-35") by decreasing ("i. e, adjusting") bid amount to form a sorted set of bids (see column 2 lines 30-52) wherein bids for the set of bidding agents are sorted using upper limits ("i. e, adjusting") for the bids for the set of bidding agents see column 2 lines 30-52 identifying a first bid ("i. e, "initial auction") from the plurality of bids for which an unallocatable portion ("i. e, "remaining two hub caps" see column 1 lines 42-49") of a requested quantity is present see column 2 lines19-29 and column 6 lines 30-65 selecting a number of bids from the plurality of bids, wherein the number of bids is higher in a sorted set of bids than the first bid see column 6 lines 30-65 and, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, setting a price for the number of bids to form a final equilibrium price and submitting a bid in the data processing system for each of the bidding agents based on the final equilibrium price see column 5 lines 60-65 and column 6 line 5 and column 6 lines 30-65 and first instructions for sorting a plurality of bids for a set of bidding agents ("i. e, "participants" see column 2 lines 3-57 and column 5 lines 15-35") by decreasing ("i. e, adjusting") bid amount to form a sorted set of bids see column 2 lines 30-52 wherein bids for the set of bidding agents are sorted using upper limits for the bids for the set of bidding agents see column 2 lines 30-52 second instructions for identifying a first bid ("i. e, "initial auction") from the plurality of bids for which an unallocatable portion ("i. e, "remaining two hub caps" see column 1 lines 42-49") of a

requested quantity is present see column 2 lines19-29 and column 6 lines 30-65 third instructions for selecting a number of bids from the plurality of bids, wherein the number of bids is higher in a sorted set of bids than the first bid column 6 lines 30-65) and, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, fourth instructions for setting a price for the number of bids to form a final equilibrium price and fifth instructions for submitting a bid for each of the bidding agents based on the final equilibrium. Note Fig: 3b and see column 5 lines 60-65 and column 6 line 5 and column 6 lines 30-65.

It is inherently clear that Applicant's limitations were addressed within the teachings of Boarman.

8. In response to the 35 USC 101 rejection arguments, for a claim to be statutory under 35 USC 101 the following two conditions must be met:

1) In the claim, the practical application of an algorithm or idea results in a useful, concrete, tangible result, and

2) The claim provides a limitation in the technological arts that enables a useful, concrete, tangible result.

As to the technology requirement, note MPEP Section IV 2(b). Also note In re Waldbaum, 173USPQ 430 (CCPA 1972) which teaches "useful arts" is synonymous with "technological arts". In Musgrave, 167USPQ 280 (CCPA 1970), In re Johnston, 183USPQ 172 (CCPA 1974), and In re Toma, 197USPQ 852 (CCPA 1978), all teach a technological requirement.

Applicant"s arguments-with-regards to not being required to embed a computer or processor or module in to the claims because the it has satisfied the 101 rejection "as to method of doing business" are not persuasive.

The invention in the body of the claim must recite technology. If the invention in the body of the claim is not tied to technological art, environment, or machine, the claim is not statutory. Ex parte Bowman 61 USPQ2d 1665, 1671 (BD. Pat. App. & Inter. 2001) (Unpublished)

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

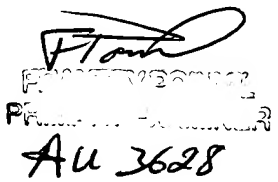
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 703-308-0505. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0040 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



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March 3, 2005